

STAT

ARTICLE APPEARED
ON PAGE 34

PHILADELPHIA INQUIRER
24 JUNE 1980

Limited use of illegal evidence allowed

By Aaron Epstein
Inquirer Washington Bureau

WASHINGTON — In the case of the Castle Bank briefcase caper, the Supreme Court ruled 6-3 yesterday that the government may use evidence against a criminal defendant that was illegally taken from someone else.

The dissenters accused their fellow justices of handing the government "a sword... to sacrifice the constitutional rights of one person in order to prosecute another."

The decision, which overruled two lower courts, amounted to a refusal to allow federal judges to suppress illegally obtained evidence that is not covered by the constitutional protection against unreasonable searches.

As a result, the dissenters said, the government may continue to advise law-enforcement agents that they may deliberately conduct an illegal search of one individual to obtain evidence against others who are the real targets of an investigation.

The case focused on the methods used by the IRS to obtain documents in its Project Haven investigation of Americans who hid income in Caribbean banks to evade taxes.

The documents were used to convict Jack Payner, a retired Cleveland investor, but the evidence was suppressed and the conviction erased by lower courts.

IRS sleuths hired a private detective and a female decoy in a plot to obtain documents from a Bahamian banker's briefcase.

The banker, Michael Wolstencroft, vice president of Castle Bank & Trust Ltd. in Nassau, was introduced by the private detective, Norman Casper, to several women.

One of the women, Sybil Kennedy, a private investigator, made a date with the banker in Miami in January 1973. They went to dinner at a Key Biscayne restaurant, leaving his locked briefcase in her apartment.

Casper then entered the apartment, took the briefcase first to a locksmith, who made a key, and then to the IRS agents, who copied the documents.

While a lookout kept tabs on the banker and the decoy at the restaurant, the briefcase and its contents were put back in the apartment before the couple returned.

The photographed documents showed that more than 300 people, including nationally known U.S. businessmen, entertainers and organized-crime figures, held about \$250 million in assets in Castle Bank accounts.

However, the huge tax evasion investigation fizzled. Donald Alexander, then the IRS commissioner, called it off because of the illegal search, and the Justice Department bowed out, reportedly largely because of pressure from the CIA.

The Wall Street Journal reported last April that the CIA believed that a prosecution would have endangered its secret operations in Latin America and the Far East, which were financed by millions of dollars flowing through Castle Bank.

U.S. District Judge John Manos of Cleveland, in canceling Payner's conviction, called the government agents' tactics "outrageous." He said they had "plotted" and "schemed" to violate the Constitution and the laws of Florida.

Other government agents must be told, Manos said, that "purposeful criminal acts on behalf of the gov-

ernment will not be tolerated in this country and such acts shall never be allowed to bear fruit."

But Justice Lewis Powell, writing for the Supreme Court majority, declared that while no court should condone the IRS briefcase caper, constitutional principles "do not command the exclusion of evidence in every case of illegality."

The Constitution allows reliable evidence, even if it is tainted by an illegal search, to be used against someone who was not the direct victim of the search, Powell wrote.

And, he wrote, a federal judge should not use his supervisory power over criminal justice, as Manos did, to disregard the Supreme Court's interpretation of the Constitution.

Justices Thurgood Marshall, William Brennan and Harry Blackmun dissented.